

APPEAL NO. 022225
FILED OCTOBER 4, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on August 7, 2002. The hearing officer determined that the appellant's (claimant) compensable (low back) injury of _____, does not include an L4-5 herniated disc and that because the L4-5 herniated disc is not part of the compensable injury, the claimant does not have disability.

The claimant appeals, contending that his L4-5 disc herniation naturally flowed from the compensable injury and the compensable injury was the producing cause of his herniated disc at L4-5. The respondent (carrier) responds that this is a legal question rather than a medical question and urges affirmance.

DECISION

Affirmed.

The facts are relatively undisputed. The claimant, a surveyor, sustained a compensable low back injury on _____. The hearing officer, in the Statement of the Evidence, details the course of treatment and doctors the claimant saw. An MRI performed on October 30, 2000, had an impression of "a focal posterior central disc protrusion [at L4-5] which could be impinging either L5 nerve root." The initial treating doctor had an impression of "L-4, L-5 ruptured disc, central protrusion." The claimant continued to receive active treatment for his injury, including physical therapy (PT) and epidural steroid injections. In June 2001, a carrier required medical examination (RME) doctor noted "significant degenerative disc disease" and a broad disc bulge causing mild spinal stenosis, suggested an "IDET procedure" and commented that if all else fails and the claimant remains symptomatic, "he might come to surgery." Other conservative treatment was given and the claimant was placed in PT for four weeks on October 8, 2001. While at home walking to the bathroom, the claimant sneezed, causing immediate "excruciating" pain. The claimant went to the doctor the next day and another lumbar MRI was performed on October 30, 2001. That MRI showed a complete L4-5 herniated disc with a large free fragment impinging the left L5-S1 nerve root. The claimant had spinal surgery on January 25, 2002.

A Texas Workers' Compensation Commission RME doctor, in a report dated June 19, 2002, commented:

This patient appears to have injured his L4-5 disc significantly at work _____ such that a simple sneeze one year later completely herniated it and pushed a large, free fragment into the canal to impinge upon 2 nerve roots and additionally very severely stenosed the spinal canal. The compensable injury _____ is the cause of the herniated L4-5 disc.

The hearing officer cited this report but nonetheless determined that the sneeze at home was the cause of the L4-5 disc herniation. The carrier argues that where an injury does no more than weaken the physical resistance to disease, it is legally insufficient to constitute a producing cause citing Jacoby v. Texas Employers' Insurance Association, 318 S.W.2d 921 (Tex. Civ. App.-San Antonio 1958, writ ref'd n.r.e.). The carrier also argues that the herniated disc did not "naturally flow" from the compensable injury citing Maryland Casualty Company v. Rogers, 86 S.W.2d 867, 871 (Tex. Civ. App.-Amarillo 1935, writ ref'd) and several Appeals Panel decisions.

In Texas Workers' Compensation Commission Appeal No. 021169, decided June 27, 2002, a case involving a follow-on injury to the left leg, the Appeals Panel discussed several cases involving follow-on injuries to the same body part and to other body parts, and concluded that a follow-on injury that resulted from instability, weakness, or lowered resistance from the compensable injury does not constitute making the follow-on injury compensable. In this case, the claimant sustained a compensable injury at the L4-5 level, continued to receive treatment for that injury, but was able to continue to work at a light or sedentary work level until the sneeze incident. Comparison of the pre- and post-sneeze MRI's showed a substantial and significant change in condition which can only be attributed to the sneeze incident. While the compensable injury may have weakened the L4-5 disc, and the (_____) injury) MRI showed a protrusion, the sneeze completely herniated the disc and "pushed a large, free fragment into the canal to impinge upon 2 nerve roots." Without the L4-5 disc herniation being held compensable, the claimant did not, by definition in Section 401.011(16), have any disability.

Upon review of the record before us, and the complained-of determinations, we conclude that there is sufficient legal and factual support for the hearing officer's decision. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Accordingly, the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY COMPANY OF CONNECTICUT** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Philip F. O'Neill
Appeals Judge